CALIFORNIA ENERGY COMMISSION
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October 26, 2004

Mr. Matt Tennis
Legislative Director
Associated Builders and Contractors of California
1029 K Street, Suite 32
Sacramento, CA 95814

Dear Mr. Tennis:

I am responding to your letter of August 10, 2004 in which you expressed concern regarding the participation of the California Unions for Reliable Energy (CURE) in the California Energy Commission's power plant siting process. While you requested that the Energy Commission investigate your allegations of CURE's abuse of the permitting process in the 2005 Integrated Energy Policy Report (IEPR) proceeding, the California Energy Commission Commissioners have requested that I respond directly to your letter outside of the IEPR proceeding as a more appropriate and timely way of dealing with this issue.

Your letter alleges that "environmental permit extortion" or "greenmail" has been used by construction unions to cause delays and increase the costs of energy facilities in the Energy Commission's siting process and ultimately win Project Labor Agreements from energy facility developers. You indicate that these results are accomplished through the use of excessive data requests and other techniques, and that CURE in particular has attained intervenor status in the proceedings of several power plant licensing cases for that purpose.

To determine whether CURE's involvement has resulted in delays or increased costs in the permitting of energy facilities, we collected data on the 35 power plant projects (see Table 1) that have been permitted by the Energy Commission since 1996 (excluding those projects approved under the Small Power Plant Exemption process and the now expired 21-day permitting process). We looked at the time required to review these applications from the date of acceptance to the final decision to see if involvement by CURE may have resulted in increased permitting times. To determine if their involvement resulted in increased costs, we also looked at the amount of Energy Commission staff resources spent during the review.

On average, 492 days were required to review the 35 Applications for Certification (AFCs) submitted to the Energy Commission and licensed since 1996. The average review time of the 11 Applications for Certification where CURE was actively involved as an intervenor was 452 days. The average review time of the 24 Applications for

Certification where CURE was *not* actively involved was actually higher -- 510 days. Thus, for this grouping of projects, CURE's participation did not increase the average period of review. Regarding the expenditure of staff resources, it required an average of 6.48 person years for staff to review projects where CURE was an active intervenor, compared to 5.74 person years on those projects where CURE was not actively involved. This is a difference of approximately 12 percent.

Because of the unique circumstances associated with 35 different projects and the multiplicity of issues that can impact a project schedule, it is difficult to draw definitive conclusions regarding the impact of an intervenor, like CURE, on the Energy Commission's siting process from such a diverse universe of cases. Consequently, we decided to review two smaller subgroups of projects to see if there appeared to be a correlation between CURE's active participation on a project with the time needed for project review and the expenditure of staff resources.

The first subgroup we examined was limited to only those projects where applicants planned to begin construction shortly after certification. Not surprisingly, applicants who are committed to beginning construction upon receipt of their license are more attentive to the project schedule and make sure the issues raised by Energy Commission staff and other parties are addressed expeditiously. The average review time for this subgroup of 25 projects was 422 days (see Table 2). In this subgroup, the average review time where CURE was an active intervenor was 428 days, compared to an average of 417 days for those projects where CURE did not actively participate. For these projects, there was little difference in the average review time, with or without CURE's involvement. However, there was a difference, in the amount of staff resources expended on the projects where CURE was an active intervenor versus those projects they only monitored. Where CURE was an active intervenor, staff averaged 6.36 person years, compared to 5.35 person years for projects CURE simply monitored, at a difference of approximately 19 percent.

The second subgroup we reviewed was comprised of eighteen12-month Applications for Certification.[1] The average review time for this group of projects was 497 days. The average review time for the 7 projects where CURE was an active intervenor was 538

[1] The larger universe of 35 projects contained 4-, 6- and 12-month AFC projects. The filing requirements for the 12-month Application are not as extensive as for the 4- and 6-month Applications (the 4-month AFC was established by AB 1970 in September 2000 and expired January 1, 2003, and the 6-month Application has just been signed back into law by Governor Schwarzenegger); the time designation refers to when the Energy Commission is required to make a final decision on a project after it has been accepted as being data adequate.

days compared to an average review time of 471 days for projects that CURE only monitored (see Table 3), a difference of 67 days. Staff costs for these two groups of projects also varied. Where CURE was an active intervenor, staff expended 7.8 person years per project compared to 6.3 person years for the projects CURE only monitored -- a difference of approximately 25 percent.

Please note, the averages of the two subgroups discussed above can be significantly impacted by removing one or two projects that took much longer to review. For these projects, the lengthy schedule may have had little or nothing to do with the participation of the intervenors.

Given the different outcomes regarding review times from the three groupings of power plants examined, it is difficult to draw absolute conclusions on whether a party to a proceeding in a specific siting case impacted the project schedule or the unique circumstances associated with each project, circumstances that often have a greater impact on the project schedule than intervenors. The data from the two subgroups suggests that, under some circumstances, CURE's active participation on a project could correlate with increased review time. This points out that concerns raised by any party – a local citizens group, a state or local agency, another power plant developer, an adjacent business interest, a labor union, or even the Energy Commission staff – can add more time to the review of a project. If any party has questions on or disagrees with an applicant's proposal, it may mean additional time is needed compared with a non-contested case, depending on the issues raised and the time required to address and resolve any disputed issues. More time may be needed to prepare and respond to data requests and responses, prepare additional testimony, hold additional hearings, and to prepare a decision that will be sustainable in the event of a legal challenge.

Based upon our experience, we believe that factors most likely to impact a project schedule are the project's location, the degree of acceptance by the community in which it is located, consistency with legal requirements, changes proposed during the process by the project developer, and whether the project developer intends to construct the project immediately or delay the start of construction. Throughout the Energy Commission's history, the projects that have consistently required more time to review have been those projects that have either not complied with local zoning/general plans; engendered intense public opposition; were located in the coastal zone and used sea water for cooling, requiring careful review and coordination with numerous state and federal agencies; or made significant changes to the project during the review process.

In each of the project groupings/categories, staff expended more resources working on the projects where CURE was an active intervenor compared to projects that CURE monitored. Depending on the grouping, staff costs increased on average from 12 to 25 percent indicating that there is a correlation between the amount of resources needed to process a case where there is active intervention, opposition to a project, and/or controversial issues to resolve, and that project costs are likely to increase based upon the active intervention of other parties. We recognize that staff expenditures may not directly correlate with the actual costs of permitting incurred by a project developer.

We note that CURE has been as effective as other sophisticated intervenors in raising issues of concern with proposed projects, seeking project changes in response to its concerns, and presenting its perspective in the proceedings. Such intervention is allowed and even encouraged under the Energy Commission's regulations as long as the intervention is appropriate and focused on issues germane to the proceeding. It is the responsibility of the two Commissioners presiding over a case to approve petitions to intervene from members of the public and organizations such as CURE if they deem the request to be reasonable and relevant. If granted intervention status, a person or organization is made a party to the proceeding and allowed to file data requests, submit testimony, present witnesses at hearings, and cross examine the witnesses of other parties, including the staff and applicant. It is also the responsibility of the Committee to ensure that the intervenors do not abuse their rights as a party to the proceeding.

In your letter, you refer to the added expense of responding to data requests submitted by intervenors. You indicate that as an intervenor, CURE submitted requests for an "enormous amount of environmental impact data" and that "the City of Roseville would have been required to provide the data at tremendous cost and delay to the power plant permitting process." While I am unable to comment on the costs that would have been incurred in responding to these data requests, I would note that answering data requests from parties is a normal aspect of a power plant siting case. Data requests can be directed to any party by any party. Project applicants or other parties receiving data requests are free to object to the Committee regarding any data request they believe is not relevant to the proceeding. Parties are not required to answer frivolous questions or provide information the Energy Commission believes is not necessary to understand the potential impacts of a project or upon which to base a decision.

We did look at the docket logs for several cases where CURE was an active intervenor. CURE submitted 412 data requests on the Salton Sea geothermal project, and filed 148 data requests and four briefs on the Elk Hills project. Clearly, reviewing and responding to this number of data requests can require significant time and resources for an applicant. Of course, the staff also files data requests to obtain information from project

applicants, as do other intervenors. The number varies by project and depends on several factors including the complexity of a case, the scope of the information contained in the Application for Certification, changes made to the project by the applicant during the Energy Commission's review, and the number and type of disputed issues. The Energy Commission staff submitted 139 data requests on the Salton Sea geothermal project and filed 94 data requests on the Elk Hills project. For two other projects that also had a high level of intervenor involvement and required extended review periods, Metcalf (an extremely controversial and highly contested project) and High Desert, the staff submitted 246 and 164 data requests, respectively. On the Morro Bay project, one of the intervenors, the Coastal Alliance Plant Expansion (CAPE), submitted over 400 data requests to the applicant and five requests for data to Energy Commission staff.

The issues you raise in your letter were examined in part by the California State Auditor in a review of the Energy Commission's siting process and are contained in their August 2001 report (Publication No. 2001-118). On page 22 of the report, the State Auditor discusses intervention in the Energy Commission's siting process and specifically mentions CURE. The report stated that one of CURE's members "believes CURE's efforts contributed to postponing the High Desert Power Plant Project for almost two years until the applicant reached an agreement with the union." In addition, the State Auditor indicated that in response to a challenge by the High Desert project applicant, the Energy Commission issued a decision stating CURE's participation was "undeniably relevant" to the proceedings. Staff believes the delay in processing the High Desert Application for Certification had much less to do with CURE's participation, notwithstanding the statements of one of CURE's members, than it had to do with the project applicant making numerous and significant changes to the project after the application was filed, including the addition of a 32-mile natural gas pipeline to provide the project with an alternative source of fuel.

In summary, we recognize that CURE, like most intervenors, has its own set of issues and concerns that it wants addressed in siting cases. The Energy Commission must balance the competing interests of various parties to a proceeding, ensuring the timely and efficient review of applications while maintaining an open and transparent siting process that is accessible to intervenors and the public. Intervenor concerns may necessitate additional project review time and certainly require additional resources on the part of staff, the Committee, and applicants to address and resolve. However, because of the unique circumstances associated with each project we believe that to determine whether any intervenor impacted a project schedule and/or review costs, and

to what extent, would require a detailed examination of the specific issues and facts associated with that case. Please call me at (916) 654-4996 if you have additional questions or concerns.

Sincerely,

ROBERT L. THERKELSEN
Executive Director

cc: William J. Keese, Chairman
Arthur H. Rosenfeld, Commissioner
James D. Boyd, Commissioner
John L. Geesman, Commissioner
Jackalyne Pfannenstiel, Commissioner
Terry O'Brien, Deputy Director,
Systems Assessment & Facilities Siting Division

Table 1.

All Power Plant Applications for Certification Approved Since 1996 [1]

1	Project	2 Docket #	3 AFC Data Adequate	4 CEC Decision Date	5 Total Days to Decision	6 Person Years
CURE Active [2]						
1	High Desert - Constellation	97-AFC-1	12/3/97	5/3/00	882	14.51
2	Sutter - Calpine	97-AFC-2	1/28/98	4/14/99	441	10.20
3	Los Medanos (Pittsburg) - Calpine	98-AFC-1	7/29/98	8/17/99	384	6.37
4	La Paloma - PG&E Natl.	98-AFC-2	8/26/98	10/6/99	406	4.88
5	Sunrise - Texaco & Edison Mission	98-AFC-4	2/17/99	12/6/00	658	6.94
6	Elk Hills - Sempra & Oxy	99-AFC-1	6/9/99	12/6/00	546	4.62
7	Three Mtn - Covanta	99-AFC-2	6/23/99	5/16/01	693	7.72
8	Huntington Beach Unit 3 & 4 - AES	00-AFC-13	2/7/01	5/10/01	92	3.51
9	Valero Cogen Units 1 & 2	01-AFC-5	6/6/01	10/31/01	147	2.28
10	Los Esteros - Calpine Units 1-4	01-AFC-12	9/25/01	7/2/02	280	2.89
11	Salton Sea Geothermal	02-AFC-2	9/25/02	12/17/03	448	7.35
				Average	**452**	**6.48**
CURE Monitored [3]						
12	Delta - Calpine	98-AFC-3	2/17/99	2/9/00	357	4.67
13	Metcalf - Calpine	99-AFC-3	6/23/99	9/24/01	824	12.46
14	Moss Landing Unit 1 & 2 - Duke	99-AFC-4	8/11/99	10/25/00	441	4.87
15	Otay Mesa - Calpine	99-AFC-5	10/6/99	4/18/01	560	7.33
16	Pastoria - Calpine	99-AFC-7	1/26/00	12/20/00	329	3.71
17	Blythe - Caithness & FPL	99-AFC-8	3/22/00	3/21/01	364	6.68
18	Western Midway-Sunset - Mission Energy	99-AFC-9	3/8/00	3/21/01	378	3.54
19	Contra Costa - Mirant	00-AFC-1	5/17/00	5/30/01	378	6.29
20	Morro Bay - Duke	00-AFC-12	11/22/00	8/2/04	1349	11.17
21	Mountainview - Intergen	00-AFC-2	5/17/00	3/21/01	308	3.99
22	United Golden Gate Phase 1 - El Paso	00-AFC-5	10/25/00	3/7/01	133	Not available
23	Tracy Peaker - GWF	01-AFC-16	10/17/01	7/17/02	273	3.34
24	Inland Empire Comb. Cycle - Calpine	01-AFC-17	12/19/01	12/17/03	728	5.41
25	Henrietta Peaker - GWF	01-AFC-18	10/17/01	3/7/02	141	2.21
26	Cosumnes Power Plant - SMUD	01-AFC-19	11/14/01	9/9/03	664	10.61
27	Tesla Comb.Cycle	01-AFC-21	1/9/02	6/16/04	889	10.57
28	San Joaquin Valley Energy Project - Calpine	01-AFC-22	1/9/02	1/14/04	735	2.26
29	Palomar Escondido - Sempra	01-AFC-24	2/6/02	8/6/03	546	5.43
30	City of Vernon Comb. Cycle	01-AFC-25	5/8/02	5/20/03	377	3.47
31	East Altamont Energy Center - Calpine	01-AFC-4	6/27/01	8/20/03	784	8.99
32	Magnolia - SoCal Power Authority	01-AFC-6	9/25/01	3/5/03	526	3.97
33	Russell City - Calpine	01-AFC-7	7/11/01	9/11/02	427	4.47
34	Pico Power Comb. Cycle - Silicon Valley Power	02-AFC-3	11/20/02	9/9/03	293	2.41
35	Walnut Energy Center - TID	02-AFC-4	12/18/02	2/18/04	427	4.23
				Average	**510**	**5.74**
			Combined Average		**492**	**5.98**

(1) This table includes all power plant Applications for Certification approved since 1996. During this time the Energy Commission was authorized to review applications using 4-month, 6-month, and 12-month processes.

(2) CURE Active means that CURE actively pursued issues publicly in the case including filing data requests with the applicant or actively participated in workshops and/or hearings.

(3) CURE Monitored means that CURE attended workshops and hearings but was not actively involved in the case by publicly pursuing issues or filing data requests.

10/29/04

Table 2.
Power Plant Applications for Certification Approved Since 1996 - Projects with Plans for Immediate Construction [1]

1		2	3	4	5	6
	Project	Docket #	AFC Data Adequate	CEC Decision Date	Total Days to Decision	Person Years
CURE Active [2]						
1	High Desert - Constellation	97-AFC-1	12/3/97	5/3/00	882	14.51
2	Sutter - Calpine	97-AFC-2	1/28/98	4/14/99	441	10.20
3	Los Medanos (Pittsburg) - Calpine	98-AFC-1	7/29/98	8/17/99	384	6.37
4	La Paloma - PG&E Natl.	98-AFC-2	8/26/98	10/6/99	406	4.88
5	Sunrise - Texaco & Edison Mission Energy	98-AFC-4	2/17/99	12/6/00	658	6.94
6	Elk Hills - Sempra & Oxy	99-AFC-1	6/9/99	12/6/00	546	4.62
7	Huntington Beach Unit 3 & 4 - AES	00-AFC-13	2/7/01	5/10/01	92	3.51
8	Valero Cogen Units 1 & 2	01-AFC-5	6/6/01	10/31/01	147	2.28
9	Los Esteros - Calpine Units 1-4	01-AFC-12	9/25/01	7/2/02	280	2.89
10	Salton Sea Geothermal	02-AFC-2	9/25/02	12/17/03	448	7.35
				Average	**428**	**6.36**
CURE Monitored [3]						
11	Delta - Calpine	98-AFC-3	2/17/99	2/9/00	357	4.67
12	Metcalf - Calpine	99-AFC-3	6/23/99	9/24/01	824	12.46
13	Otay Mesa - Calpine	99-AFC-5	10/6/99	4/18/01	560	7.33
14	Moss Landing Unit 1 & 2 - Duke	99-AFC-4	8/11/99	10/25/00	441	4.87
15	Pastoria - Calpine	99-AFC-7	1/26/00	12/20/00	329	3.71
16	Blythe - Caithness & FPL	99-AFC-8	3/22/00	3/21/01	364	6.68
17	Contra Costa - Mirant	00-AFC-1	5/17/00	5/30/01	378	6.29
18	Mountainview - Intergen	00-AFC-2	5/17/00	3/21/01	308	3.99
19	Magnolia - SoCal Power Authority	01-AFC-6	9/25/01	3/5/03	526	3.97
20	Tracy Peaker - GWF	01-AFC-16	10/17/01	7/17/02	273	3.34
21	Henrietta Peaker - GWF	01-AFC-18	10/17/01	3/7/02	141	2.21
22	Cosumnes Power Plant - SMUD	01-AFC-19	11/14/01	9/9/03	664	10.61
23	City of Vernon Comb. Cycle	01-AFC-25	5/8/02	5/20/03	377	3.47
24	Pico Power Comb. Cycle - Silicon Valley Power	02-AFC-3	11/20/02	9/9/03	293	2.41
25	Walnut Energy Center - TID	02-AFC-4	12/18/02	2/18/04	427	4.23
				Average	**417**	**5.35**
			Combined Average		**422**	**5.75**

(1) This table includes all power plant Applications for Certification approved since 1996 with plans for immediate construction following certification by the Energy Commission. During this time, the Energy Commission was authorized to review applications using 4-month, 6-month, and 12-month processes.
(2) CURE Active means that CURE actively pursued issues publicly in the case including filing data requests with the applicant or actively participated in workshops and/or hearings.
(3) CURE Monitored means that CURE attended workshops and hearings but was not actively involved in the case by publicly pursuing issues or filing data requests.

Table 3.
12-Month Power Plant Applications for Certification Approved Since 1996 - Projects with Plans for Immediate Construction [1]

1		2	3	4	5	6
	Project	Docket #	AFC Data Adequate	CEC Decision Date	Total Days to Decision	Person Years
CURE Active [2]						
1	High Desert - Constellation	97-AFC-1	12/3/97	5/3/00	882	14.51
2	Sutter - Calpine	97-AFC-2	1/28/98	4/14/99	441	10.20
3	Los Medanos (Pittsburg) - Calpine	98-AFC-1	7/29/98	8/17/99	384	6.37
4	La Paloma - PG&E Natl.	98-AFC-2	8/26/98	10/6/99	406	4.88
5	Sunrise - Texaco & Edison Mission Energy	98-AFC-4	2/17/99	12/6/00	658	6.94
6	Elk Hills - Sempra & Oxy	99-AFC-1	6/9/99	12/6/00	546	4.62
7	Salton Sea Geothermal	02-AFC-2	9/25/02	12/17/03	448	7.35
				Average	**538**	**7.84**
CURE Monitored [3]						
8	Delta - Calpine	98-AFC-3	2/17/99	2/9/00	357	4.67
9	Metcalf - Calpine	99-AFC-3	6/23/99	9/24/01	824	12.46
10	Otay Mesa - Calpine	99-AFC-5	10/6/99	4/18/01	560	7.33
11	Moss Landing Unit 1 & 2 - Duke	99-AFC-4	8/11/99	10/25/00	441	4.87
12	Pastoria - Calpine	99-AFC-7	1/26/00	12/20/00	329	3.71
13	Blythe - Caithness & FPL	99-AFC-8	3/22/00	3/21/01	364	6.68
14	Contra Costa - Mirant	00-AFC-1	5/17/00	5/30/01	378	6.29
15	Mountainview - Intergen	00-AFC-2	5/17/00	3/21/01	308	3.99
16	Magnolia - SoCal Power Authority	01-AFC-6	9/25/01	3/5/03	526	3.97
17	Cosumnes Power Plant - SMUD	01-AFC-19	11/14/01	9/9/03	664	10.61
18	Walnut Energy Center - TID	02-AFC-4	12/18/02	2/18/04	427	4.23
				Average	**471**	**6.26**
			Combined Average		**497**	**6.87**

(1) This table only includes power plant Applications for Certification with plans for immediate construction that were reviewed and approved under the Energy Commission's standard 12-month licensing process. Please note that the Valero Cogen, Los Esteros, Tracy Peaker, Henrietta Peaker, City of Vernon, and Pico Power projects are not included because they were orginally filed as 4- or 6-month AFCs. In addition, the Huntington Beach project is not included because even though it was filed as a 12-month AFC, its schedule was dramatically expedited due to the energy crisis.
(2) CURE Active means that CURE actively pursued issues publicly in the case including filing data requests with the applicant or actively participated in workshops and/or hearings.
(3) CURE Monitored means that CURE attended workshops and hearings but was not actively involved in the case by publicly pursuing issues or filing data requests.